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12

13 **UNITED STATES DISTRICT COURT**
14 **SOUTHERN DISTRICT OF CALIFORNIA**
15

16 COASTAL ENVIRONMENTAL RIGHTS
17 FOUNDATION,
18 a non-profit corporation,

19 Plaintiff,

20 v.

21 AZTEC TECHNOLOGY CORPORATION,
22 a California corporation,

23 Defendant.
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Civil Case No.: '16CV2963 BEN AGS

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF AND
CIVIL PENALTIES**

**(Federal Water Pollution Control Act,
33 U.S.C. § 1251 *et seq.*)**

1 Coastal Environmental Rights Foundation, (“CERF” or “Plaintiff”), by and through its
2 counsel, hereby alleges:

3 **I. JURISDICTION AND VENUE**

4 1. This is a civil suit brought under the citizen suit enforcement provisions of
5 the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.* (the “Clean Water
6 Act” or the “CWA”). This Court has subject matter jurisdiction over the parties and this
7 action pursuant to Section 505(a)(1) of the CWA, 33 U.S.C. § 1365(a)(1), and 28 U.S.C.
8 §§ 1331 and 2201 (an action for declaratory and injunctive relief arising under the
9 Constitution and laws of the United States).

10 2. On June 8, 2016, Plaintiff issued a 60-day notice letter (“Notice Letter”) to
11 Aztec Technology Corporation, doing business as Aztec Containers, (“Aztec” or
12 “Defendant”) regarding its violations of the Clean Water Act, and of Plaintiff’s intention
13 to file suit against Defendant. The Notice Letter was sent to the registered agent for
14 Aztec, as required by 40 C.F.R. § 135.2(a)(1), the Facility (Aztec Containers), as well as
15 the Administrator of the United States Environmental Protection Agency (“EPA”), the
16 Administrator of EPA Region IX, the Executive Director of the State Water Resources
17 Control Board (“State Board”), and the Executive Officer of the Regional Water Quality
18 Control Board, San Diego Region (“Regional Board”) as required by CWA, 33 U.S.C. §
19 1365(b)(1)(A). A true and correct copy of the Notice Letter is attached hereto as Exhibit
20 A and incorporated herein.

21 3. More than sixty days has passed since the Notice Letter was served on
22 Defendant and the State and Federal agencies. Plaintiff is informed and believes, and
23 thereon alleges, that neither the EPA nor the State of California has commenced or is
24 diligently prosecuting an action to redress the violations alleged in this complaint. (33
25 U.S.C. § 1365(b)(1)(B)). This action is not barred by any prior administrative penalty
26 under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

27 4. Venue is proper in the Southern District of California pursuant to Section
28 505(c)(1) of the CWA, 33 U.S.C. § 1365(c)(1), because the sources of the violations are

located within this judicial district.

II. INTRODUCTION

5. This complaint seeks relief for the Defendant's unlawful discharge of pollutants into waters of the United States from its operations at 2600 South Santa Fe Avenue, Vista, California ("Aztec Facility" or "Site"). Specifically, Defendant discharges storm water runoff from the Site into storm drains, Agua Hedionda Creek, Agua Hedionda Lagoon, and ultimately the Pacific Ocean (collectively referred to as the "Receiving Waters"). This complaint also seeks relief for Defendant's violations of the filing, monitoring, reporting, discharge and management practice requirements, and other procedural and substantive requirements of California's General Permit for Discharges Associated with Industrial Activities (*National Pollution Discharge Elimination System ("NPDES") General Permit No. CAS000001, State Water Resources Control Board Water Quality Order No. 97-03-DWQ, as amended by Order No. 97-03-DWQ and Order No. 2014-0057-DWQ*) ("Industrial Permit"). Defendant's violations of the Clean Water Act and the Industrial Permit are ongoing and continuous.

6. With every rainfall event, hundreds of millions of gallons of polluted rainwater, originating from industrial operations such as the Aztec Facility, flow into El Cajon storm drain systems, Forester Creek, San Diego River, and ultimately the Pacific Ocean. This discharge of pollutants in storm water from industrial activities such as the Aztec Facility contributes to the impairment of downstream waters and compromises or destroys their beneficial uses.

III. PARTIES

A. San Diego Coastkeeper and Coastal Environmental Rights Foundation

7. Plaintiff CERF is a non-profit public benefit corporation organized under the laws of the State of California.

8. CERF's office is located at 1140 South Coast Highway 101, Encinitas California, 92024.

9. CERF was founded by surfers in North San Diego County and active

1 throughout California's coastal communities. CERF was established to aggressively
2 advocate, including through litigation, for the protection and enhancement of coastal
3 natural resources and the quality of life for coastal residents. One of CERF's primary
4 areas of advocacy is water quality protection and enhancement.

5 10. Plaintiff has thousands of members who live and/or recreate in and around
6 Agua Hedionda Creek, Agua Hedionda Lagoon, and ultimately the Pacific Ocean.

7 11. Plaintiff's members use and enjoy the Receiving Waters to fish, sail, boat,
8 kayak, paddle board, surf, swim, hike, view wildlife, and engage in scientific study
9 including monitoring activities, among other activities. Defendant discharges pollutants
10 from the Site to the Receiving Waters used by Plaintiff's members. Thus, Defendant's
11 discharge of pollutants impairs Plaintiff's members' uses and enjoyment of the
12 Receiving Waters.

13 12. The interests of Plaintiff's members have been, are being, and will
14 continue to be adversely affected by the Defendant's failure to comply with the Clean
15 Water Act and the Industrial Permit. The relief sought herein will redress the harms to
16 Plaintiff caused by Defendant's activities. Continuing commission of the acts and
17 omissions alleged above will irreparably harm Plaintiff's members, for which harm they
18 have no plain, speedy or adequate remedy at law.

19 **B. The Aztec Facility Owners and/or Operators**

20 13. Plaintiff is informed and believes that Aztec is a private corporation
21 organized under the laws of the State of California, and is located in Vista, California.

22 14. Plaintiff is informed and believes that Aztec has owned and operated the
23 Aztec Facility located at 2600 South Santa Fe Avenue, Vista, California, since at least
24 March 2010.

25 **IV. STATUTORY BACKGROUND**

26 **A. The Clean Water Act**

27 15. Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), prohibits the
28 discharge of any pollutant into waters of the United States unless the discharge complies

1 with various enumerated sections of the CWA. Among other things, Section 301(a)
2 prohibits discharges not authorized by, or in violation of, the terms of an NPDES permit
3 issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

4 16. Section 402(p) of the CWA establishes a framework for regulating
5 municipal and industrial storm water discharges under the NPDES program. (33 U.S.C.
6 § 1342(p)). States with approved NPDES permit programs are authorized by Section
7 402(b) to regulate industrial storm water discharges through individual permits issued to
8 dischargers and/or through the issuance of a single, statewide general permit applicable
9 to all industrial storm water dischargers. (33 U.S.C. § 1342).

10 17. Section 402(b) of the CWA allows each state to administer its own EPA-
11 approved permit for storm water discharges. (33 U.S.C. § 1342(b)). In California, the
12 State Board is charged with regulating pollutants to protect California's water resources.

13 18. Section 301(b) requires that, by March 31, 1989, all point source
14 dischargers, including those discharging polluted stormwater, must achieve technology-
15 based effluent limitations by utilizing the Best Available Technology Economically
16 Achievable (BAT) for toxic and nonconventional pollutants and the Best Conventional
17 Pollutant Control Technology (BCT) for conventional pollutants. See 33 U.S.C. §
18 1311(b); 40 C.F.R. § 125.3(a)(2)(ii)-(iii).

19 19. The Industrial Permit is a statewide general NPDES permit issued by the
20 State Board pursuant to Section 402 of the CWA that regulates the discharge of
21 pollutants from industrial sites. (33 U.S.C. § 1342).

22 20. Section 505(a)(1) of the CWA provides for citizen enforcement actions
23 against any "person" who is alleged to be in violation of an "effluent standard or
24 limitation... or an order issued by the Administrator or a State with respect to such a
25 standard or limitation." (33 U.S.C. § 1365(a)(1)).

26 21. An action for injunctive relief under the CWA is authorized by 33 U.S.C.
27 § 1365(a).

28 22. Each separate violation of the Clean Water Act subjects the violator to a

penalty of up to \$37,500 per day per violation for all violations occurring after January 27, 2009. (33 U.S.C. § 1319(d); Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. §19.4).

23. Section 505(d) of the Clean Water Act permits prevailing parties to recover costs, including attorneys' and experts' fees. (33 U.S.C. § 1365(d)).

B. California's Industrial Permit

24. The Industrial Permit, NPDES General Permit No. CAS000001, Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ and Order No. 2014-0057-DWQ is an NPDES permit adopted pursuant to Section 402 of the CWA, 33 U.S.C. § 1342(b) and 40 C.F.R. § 123.25. In order to discharge storm water lawfully in California, industrial dischargers must secure coverage under the Industrial Permit and comply with its terms, or obtain and comply with an individual NPDES permit. The Industrial Permit as amended pursuant to Order No. 2014-0057-DWQ became effective July 1, 2015 ("New Industrial Permit").

25. Failure to comply with the Industrial Permit or New Industrial Permit constitutes a Clean Water Act violation. (Industrial Permit, § C.1; New Industrial Permit §XXI.A.).

26. Discharge Prohibitions A(1) of the Industrial Permit and III.B. of the New Industrial Permit prohibit the direct or indirect discharge of materials other than storm water ("non-storm water discharges"), which are not otherwise regulated by an NPDES permit, to the waters of the United States. Discharge Prohibition A(2) of the Industrial Permit and III.C. of the New Industrial Permit prohibit storm water discharges and authorized non-storm water discharges which cause or threaten to cause pollution, contamination, or nuisance.

27. Effluent limitations B(3) of the Industrial Permit and Sections I.D and V.A. of the New Industrial Permit require facility operators to reduce or prevent pollutants associated with industrial activity in storm water discharges and authorized non-storm water discharges through the implementation of Best Available Technology

1 Economically Achievable (“BAT”) for toxic pollutants and Best Conventional Pollutant
2 Control Technology (“BCT”) for conventional pollutants.

3 28. Effluent limitations B(1) of the Industrial Permit and Sections I.K and
4 V.B. of the New Industrial Permit require facility operators of facilities in specific
5 industrial categories to comply with Effluent Limitations Guidelines at 40 C.F.R.
6 Chapter 1 Subchapter N.

7 29. Industrial Permit Receiving Water Limitation C(1) and New Industrial
8 Permit Receiving Water Limitation VI.B. prohibit storm water discharges and
9 authorized non-storm water discharges to surface or groundwater that adversely impacts
10 human health or the environment.

11 30. Industrial Permit Receiving Water Limitation C(2) and New Industrial
12 Permit Receiving Water Limitation VI.A. prohibit storm water discharges and
13 authorized non-storm water discharges that cause or contribute to an exceedance of an
14 applicable water quality standard in a Statewide Water Quality Control Plan or the
15 applicable Regional Board’s Basin Plan.

16 31. Section A(1) and Provision E(2) of the Industrial Permit require
17 dischargers to have developed and implemented a Storm Water Pollution Prevention
18 Plan (“SWPPP”) by October 1, 1992, or prior to beginning industrial activities, that
19 meets all the requirements of the Industrial Permit. Sections X.A. and B. of the New
20 Industrial Permit require development and implementation of site-specific SWPPPs by
21 July 1, 2015 or upon commencement of industrial activity.

22 32. The objective of the SWPPP is to identify and evaluate sources of
23 pollutants associated with industrial activities that may affect the quality of storm water
24 discharges from the Sites, and identify and implement site-specific Best Management
25 Practices (“BMPs”) to reduce or prevent pollutants associated with industrial activities
26 in storm water discharges. (Industrial Permit, Section A(2); New Industrial Permit,
27 Section X.C.1).

28 33. To ensure its effectiveness, the SWPPP must be evaluated on an annual

1 basis, and it must be revised as necessary to ensure compliance with the Permit.
2 (Industrial Permit, Sections A(9), (10); New Industrial Permit, Sections XA. And
3 X.B.1.).

4 34. Sections A(3) through A(10) of the Industrial Permit and Sections X.A to
5 X.I. of the New Industrial Permit set forth the requirements for a SWPPP.

6 35. The SWPPP must include a site map showing the facility boundaries,
7 storm water drainage areas with flow patterns, nearby water bodies, the location of the
8 storm water collection, conveyance and discharge system, structural control measures,
9 areas of actual and potential pollutant contact, and areas of industrial activity. (Industrial
10 Permit, Section A(4); New Industrial Permit, Section X.E.).

11 36. Dischargers are also required to prepare and implement a monitoring and
12 reporting program ("M&RP"). (Industrial Permit, Sections E(3), B(1); New Industrial
13 Permit, Section XI).

14 37. The objective of the M&RP is to ensure that BMPs have been adequately
15 developed and implemented, revised as necessary, and to ensure that storm water
16 discharges are in compliance with the Industrial Permit (up to July 1, 2015) and New
17 Industrial Permit (July 1, 2015 and thereafter) Discharge Prohibitions, Effluent
18 Limitations, and Receiving Water Limitations. (Industrial Permit, Section B(2); New
19 Industrial Permit, Finding J.56).

20 38. The Industrial Permit and New Industrial Permit require dischargers to
21 conduct visual observations for the presence of unauthorized non-storm water
22 discharges, to document the source of any discharge, and to report the presence of any
23 discolorations, stains, odors, and floating materials in the discharge.

24 39. The Industrial Permit and New Industrial Permit require dischargers to
25 visually observe drainage areas during the wet season (October 1 - May 30) and to
26 document the presence of any floating and suspended materials, oil and grease,
27 discolorations, turbidity, or odor in the discharge, and the source of any pollutants.

28 40. Both the Industrial Permit and New Industrial Permit require dischargers

1 to maintain records of observations, observation dates, locations observed, and
2 responses taken to eliminate unauthorized non-storm water discharges and to reduce or
3 prevent pollutants from contacting non-storm water and storm water discharges.

4 41. The Industrial Permit requires dischargers to collect a sample from all
5 discharge points during the first storm event of the wet season and during at least one
6 other storm event of the wet season, for a total of two samples per wet season.
7 (Industrial Permit, Section (B)(5)). The New Industrial permit requires dischargers to
8 collect and analyze storm water samples from two storm events with the first half of
9 each reporting year (July 1 to December 31) and two from the second half (January 1 to
10 June 30). (New Industrial Permit, Section XI.B.2.).

11 42. Dischargers must analyze each sample for pH, total suspended solids, oil
12 and grease, and for toxic chemicals and other pollutants likely to be present in
13 significant quantities in the storm water discharged from the facility. (Industrial Permit,
14 Section B(5)(c); New Industrial Permit, Section XI.B.6).

15 43. Dischargers must submit "Annual Reports" to the Regional Board in July
16 of each year. (Industrial Permit, Section E3(14); New Industrial Permit, Section XVI.A.).

17 **V. STATEMENT OF FACTS**

18 **A. Aztec Facility**

19 44. Plaintiff is informed, believes, and thereon alleges the Aztec Facility is a
20 100,000 square foot goods transfer company. The Aztec Facility belongs to Sector AA
21 of the Industrial Permit and its standard industrial classifications (SIC) code is 3412,
22 establishments primarily engaged in manufacturing metal shipping barrels, drums, kegs,
23 and pails.

24 45. Plaintiff is informed, believes, and thereon alleges the Aztec Facility
25 primarily fabricates and paints shipping containers.

26 46. Plaintiff is informed, believes, and thereon alleges the Aztec Facility
27 conducts support operations consisting metal cutting, welding, grinding, wood work,
28 caulking, and painting.

1 47. Plaintiff is informed, believes, and thereon alleges various industrial
2 materials comprised of shipping containers, paint, wastewater, dirt, oil, transmission
3 fluid, kerosene, diesel, raw metal, wood and caulking are utilized and stored onsite.

4 48. Plaintiff is informed, believes, and thereon alleges the Aztec Facility
5 Owners and/or Operators engage in the following industrial operations: metal cutting,
6 welding, grinding, wood work, caulking, painting, vehicle and equipment maintenance,
7 and shipping and receiving of containers.

8 49. Plaintiff is informed, believes, and thereon alleges particulates from
9 operations, oil, grease, suspended solids, hazardous waste, and metals such as
10 aluminum, iron and zinc materials are exposed to storm water at the Aztec Facility.

11 50. Plaintiff is informed, believes, and thereon alleges that storm water is
12 discharged from four discharge points at the Facility into stormwater conveyance
13 systems or directly to Agua Hedionda Creek.

14 51. The Aztec Facility discharges into storm water conveyance systems that
15 discharge into Agua Hedionda Creek, Agua Hedionda Lagoon, and ultimately the
16 Pacific Ocean.

17 52. The EPA promulgated regulations for the Section 402 NPDES permit
18 program defining waters of the United States. (*See* 40 C.F.R. § 122.2). The EPA
19 interprets waters of the United States to include not only traditionally navigable waters
20 but also other waters, including waters tributary to navigable waters, wetlands adjacent
21 to navigable waters, and other waters including intermittent streams that could affect
22 interstate commerce. The CWA requires any person who discharges or proposes to
23 discharge pollutants into waters of the United States to submit an NPDES permit
24 application. (40 C.F.R. § 122.21).

25 53. The Clean Water Act confers jurisdiction over non-navigable waters that
26 are tributary to traditionally navigable waters where the non-navigable water at issue
27 has a significant nexus to the navigable water. (*See Rapanos v. United States*, 547 U.S.
28 715 (2006)). A significant nexus is established if the “[receiving waters], either alone or

1 in combination with similarly situated lands in the region, significantly affect the
2 chemical, physical, and biological integrity of other covered waters.” (*Id.* at 780).

3 54. A significant nexus is also established if waters that are tributary to
4 navigable waters have flood control properties, including functions such as the
5 reduction of flow, pollutant trapping, and nutrient recycling. (*Id.* at 783).

6 55. Information available to Plaintiff indicates that each of the surface waters
7 into which the Aztec Facility discharges polluted storm water are traditional navigable
8 waters, or tributaries to such waters, such as the Agua Hedionda Creek, Agua Hedionda
9 Lagoon, and the Pacific Ocean.

10 56. Plaintiff is informed, believes, and thereon alleges the Aztec Facility’s
11 polluted discharges cause, threaten to cause, and/or contribute to the impairment of
12 water quality in Agua Hedionda Creek. Elevated levels of bacteria, manganese,
13 phosphorus, total dissolved solids, and nitrogen have resulted in the inability of the
14 Creek to support its beneficial uses.

15 57. Water Quality Standards are pollutant concentration levels determined by
16 the State Board and the EPA to be protective of the beneficial uses of the receiving
17 waters. Discharges above Water Quality Standards contribute to the impairment of the
18 receiving waters’ beneficial uses.

19 58. The applicable Water Quality Standards include, but are not limited to,
20 those set out by the State of California in the Criteria for Priority Toxic Pollutants, 40
21 C.F.R. § 131.38, (“California Toxics Rule” or “CTR”) and in the Basin Plan. The CTR
22 limits are, in part, as follows: lead – .065 milligrams per liter (mg/L); copper – .013
23 mg/L; zinc – .12 mg/L. These numeric criteria are set to protect human health and the
24 environment in the State of California. The CTR limits represented are the maximum
25 concentration levels permissible to achieve health and environmental protection goals.

26 59. EPA Benchmarks are the pollutant concentrations above which EPA has
27 determined are indicative of a facility not successfully developing or implementing
28 BMPs that meet BAT for toxic pollutants and BCT for conventional pollutants. (See

Multi-Sector General Permits for Stormwater Discharges Associated with Industrial Activity (MSGP), 2015, §§6.2.1, 8.AA, Table 8.AA-1). The benchmark values provide an appropriate level to determine whether a facility's storm water pollution prevention measures are successfully implemented. (MSGP Fact Sheet, p. 52). Failure to conduct and document corrective action and revision of control measures in response to benchmark exceedances constitutes a permit violation. (*Id.*, at p. 65).

60. EPA has established the following sector-specific benchmark values for Sector AA, Fabricated Metal Products Facilities: aluminum: 0.75 mg/L; iron: 1.0 mg/L; zinc: 0.04-0.26¹; nitrate plus nitrate nitrogen: 0.68 mg/L. (MSGP, §8.AA, Table 8.AA-1).

61. The Regional Board's Basin Plan establishes water quality objectives, implementation plans for point and nonpoint source discharges, and prohibitions, and furthers statewide plans and policies intended to preserve and enhance the beneficial uses of all waters in the San Diego region. (*See* Basin Plan at p. 1-1). The Basin Plan identifies several beneficial uses for regional waters, including for Agua Hedionda Creek. The Basin Plan establishes the following water quality objectives for the San Diego Hydrologic Unit, including Forester Creek: iron: 0.3 mg/L; pH – not less than 6.5 and not greater than 8.5. (*See* Basin Plan at Table 3-2; p. 3-19; p. 3-25)

B. Past and Present Industrial Activity at the Aztec Facility

62. Plaintiff is informed, believes, and thereon alleges that, in its Notice of Intent to Obtain Coverage under Industrial Permit submitted to the Regional Board, the Defendant lists its primary Standard Industrial Classification ("SIC") code as 3412 for facilities primarily engaged in metal shipping barrels, drums, kegs, and pails.

63. Plaintiff is informed, believes, and thereon alleges that the Defendant engages in fabrication of shipping containers.

64. Plaintiff is informed, believes, and thereon alleges that the Defendant

¹ The zinc benchmark is dependent on water hardness.

engages in metal cutting, welding, and grinding, wood work, and caulking.

65. The potential pollutant sources associated with the industrial activities at the Aztec Facility include, but are not limited to: the scrap metal outdoor storage areas; metal outdoor storage areas; painting area; oil and lubricant storage; oil-water separator; equipment and container storage areas; loading and unloading areas; maintenance areas; hazardous waste storage areas; and the on-site material handling equipment such as forklifts.

66. Plaintiff is informed, believes, and thereon alleges that pollutants present in storm water discharged from the Aztec Facility therefore include but are not limited to: toxic metals such as iron, zinc, and aluminum; petroleum products including oil, fuel, grease, transmission fluids, brake fluids, hydraulic oil and diesel fuel; acids and solvents; lubricants; caustics; nitrogen; dissolved solids; total suspended solids and pH-affecting substances; hazardous waste; and fugitive and other dust, dirt and debris.

67. Based upon Plaintiff's investigation, Plaintiff is informed, believes, and thereon alleges Defendant stores metal, hazardous waste, and other materials outside where it is exposed to storm water.

68. Plaintiff is informed, believes, and thereon alleges that there are containers stored on-Site that are uncovered and/or uncontained.

69. Plaintiff is informed, believes, and thereon alleges that at least four discharge points at the Aztec Facility that convey storm water pollution off the site and into area storm water conveyance systems.

70. Plaintiff is informed, believes, and thereon alleges that the Aztec Facility lacks effective BMPs to control the flow of storm water from the Facility into storm water conveyance systems or directly into Agua Hedionda Creek.

71. Suspended solids, metal particles, and other pollutants have been and continue to be conveyed from the Aztec Facility into storm drain conveyance systems.

72. Plaintiff is informed, believes, and thereon alleges that during rain events at the Aztec Facility, storm water carries pollutants from the outdoor fabrication and

1 storage areas, bins and dumpsters; outdoor equipment and vehicles; painting area; floor
2 contaminants, equipment, and other sources directly into the storm drain conveyance
3 systems.

4 73. Plaintiff is informed, believes, and thereon alleges that the Aztec Facility
5 pollution control measures are ineffective in controlling the exposure of pollutant
6 sources to storm water at the Aztec Facility.

7 **C. The Aztec Facility and its Associated Discharge of Pollutants**

8 74. Plaintiff is informed, believes, and thereon alleges that with every
9 significant rain event, the Aztec Facility discharges polluted storm water from the
10 industrial activities at the facility via the City of Visa's storm drain system and into the
11 Receiving Waters, or directly to Agua Hedionda Creek.

12 75. Plaintiff is informed, believes, and thereon alleges that the Receiving
13 Waters into which the Aztec Facility discharges polluted storm water are waters of the
14 United States and therefore the Industrial Permit properly regulates discharges to those
15 waters.

16 76. Surface waters that cannot support their Beneficial Uses listed in the Basin
17 Plan are designated as impaired water bodies pursuant to section 303(d) of the Clean
18 Water Act. According to the 2010 303(d) List of Impaired Water Bodies, Agua
19 Hedionda Creek is impaired for bacteria, manganese, phosphorus, total dissolved solids,
20 and nitrogen.

21 77. Because discharges from the Aztec Facility contain particulates, metals,
22 and nitrogen, the Aztec Facility's polluted discharges cause and/or contribute to the
23 impairment of water quality in the Receiving Waters.

24 78. Plaintiff is informed, believes, and thereon alleges that the storm water
25 discharged from the Aztec Facility has exceeded the CTR Water Quality Standards
26 applicable to zinc in California. For example, Defendant's 2015-2016 monitoring data
27 indicates levels of zinc as high as 2.2 mg/L which is over 18 times the CTR limit of 0.12

28 ///

1 mg/L and the EPA Benchmark value of 0.12 mg/L.² (MSGP, §8.AA, Table 8.AA-1;
2 Fact Sheet, p. 56).

3 79. Plaintiff is informed, believes, and thereon alleges that the storm water
4 discharged from the Aztec Facility has exceeded the CTR Water Quality Standards
5 applicable to copper in California. For example, Defendant's 2012-2013 annual report
6 monitoring data indicates levels of copper as high as 0.079 mg/L which is 6 times the
7 CTR limit of 0.013 mg/L and 5 times the EPA Benchmark value for copper of 0.014
8 mg/L.³ (MSGP, Fact Sheet, p. 55).

9 80. Plaintiff is informed, believes, and thereon alleges that the storm water
10 discharged from the Aztec Facility has also exceeded the EPA Benchmark value for
11 aluminum. For example, Defendant's 2015-2016 monitoring data indicates exceedance
12 levels of aluminum at 25 mg/L, which is over 33 times the EPA Benchmark value for
13 aluminum of 0.75 mg/L. (MSGP, §8.AA, Table 8.AA-1).

14 81. Plaintiff is informed, believes, and thereon alleges that the storm water
15 discharged from the Aztec Facility has exceeded the EPA Benchmark value for iron.
16 For example, Defendant's 2015-2016 monitoring data indicates exceedance levels of
17 iron at 33, which is 33 times the EPA benchmark value for iron of 1.0 mg/L and 110
18 times the applicable Basin Plan objective of .3 mg/L. (MSGP, §8.AA, Table 8.AA-1,
19 Fact Sheet, p. 55).

20 82. Plaintiff is informed, believes, and thereon alleges that storm water
21 discharged from the Aztec Facility has exceeded the EPA Benchmark value for nitrate +
22 nitrate. For example, Defendant's 2015-2016 monitoring data indicates exceedance
23 levels of nitrate + nitrate at 2.8, which is over four times the EPA benchmark value for
24 nitrate + nitrate of 0.68 mg/L (MSGP, §8.AA, Table 8.AA-1, Fact Sheet, p. 55).

25 83. Plaintiff is informed, believes, and thereon alleges that during every
26

27 ² This benchmark value is hardness-dependent. Assuming the 100 mg/L water hardness range applies, the benchmark is .12
mg/L.

28 ³ This benchmark value is hardness-dependent. Assuming the 100 mg/L water hardness range applies, the benchmark is .014
mg/L.

1 significant rain event that has occurred at the Aztec Facility since June 8, 2011 through
2 the present, Defendant has discharged and continues to discharge storm water from the
3 Aztec Facility that contains pollutants at levels in violation of the prohibitions and
4 limitations set forth in the Industrial Permit and other applicable Water Quality
5 Standards.

6 84. Plaintiff is informed, believes, and thereon alleges, from visual
7 observations, sample results, and investigations available to Plaintiff, the Defendant has
8 failed and continues to fail to develop and/or implement adequate BMPs to prevent the
9 discharge of polluted storm water from the Aztec Facility.

10 85. The inadequacy of the BMPs at the Aztec Facility is a result of the
11 Defendant's failure to develop and implement an adequate SWPPP and companion
12 M&RP for this Site.

13 86. Storm water discharges from the Aztec Facility contain pollutant
14 concentration levels that are above both EPA Benchmarks and applicable Water Quality
15 Standards.

16 87. Plaintiff is informed, believes, and thereon alleges that since at least June
17 8, 2011 through the present, Defendant has failed to develop and implement BMPs that
18 meet the standards of BAT/BCT at the Aztec Facility in violation of Effluent Limitation
19 B(3) of the Industrial Permit and Effluent Limitation I.D. and V.A. of the New
20 Industrial Permit.

21 88. Each day that Defendant has failed and continues to fail to implement
22 adequate BMPs to achieve BAT/BCT constitutes a separate violation of the Industrial
23 Permit and the CWA.

24 89. Based on its investigation of the Aztec Facility, Plaintiff is informed and
25 believes that Defendant has failed to develop and implement an adequate SWPPP since
26 at least June 8, 2011 through the present.

27 90. Each day that Defendant has failed and continues to fail to implement an
28 adequate SWPPP constitutes a separate violation of the Industrial Permit and the CWA.

1 91. Plaintiff is informed, believes, and thereon alleges that Defendant has
2 failed to submit written reports to the Regional Board identifying additional BMPs
3 necessary to achieve BAT/BCT at the Aztec Facility since at least June 8, 2011, in
4 violation of Receiving Water Limitations C(3) and C(4) of the Industrial Permit and
5 New Industrial Permit Receiving Water Limitations VI.A.-C.

6 92. Each day that Defendant has operated the Aztec Facility without meeting
7 this reporting requirement of the Industrial Permit constitutes a separate violation of the
8 Industrial Permit and the CWA.

9 **D. Defendant's Monitoring Program**

10 93. From June 8, 2011 through June 30, 2015, the Aztec Facility was required
11 to sample at least two storm events every rainy season in accordance with the sampling
12 and analysis procedures set forth at Industrial Permit Section B(5).

13 94. Sampling and analysis procedures require that a sample be taken from all
14 discharge locations at the Aztec Facility and that at least two samples are taken during
15 the wet season: (1) one in the first storm event of a particular wet season; and (2) at least
16 one other storm event in the wet season. (Industrial Permit, Sections B(5) and B(7)).

17 95. From June 30, 2015 through the present the Aztec Facility is required to
18 sample at least two storm events within the first half of each reporting year (July 1 to
19 December 31) and two storm events within the second half of each reporting year
20 (January 1 to June 30) in accordance with the sampling and analysis procedures in New
21 Industrial Permit Section XI.B.

22 96. Dischargers must analyze each sample for pH, total suspended solids, oil
23 and grease, and for toxic chemicals and other pollutants likely to be present in
24 significant quantities in the storm water discharged from the facility. (Industrial Permit,
25 Section B(5)(c); New Industrial Permit, Section XI.B.6).

26 97. The Aztec Facility is required to sample for zinc, iron, aluminum, and
27 nitrate plus nitrite. (Industrial Permit, Section B(5)(c); New Industrial Permit, Section
28 XI.B.6).

1 98. All monitoring data must be uploaded to SMARTS within 30 days of
2 obtaining all results for each sampling event. (New Industrial Permit, XI.B.11.a)

3 99. Plaintiff is informed, believes, and thereon alleges that despite the
4 extremely high levels of pollutants reported in the samples that were taken at the Aztec
5 Facility, the Defendant has not sampled and submitted sampling reports as required.

6 100. Plaintiff is informed, believes, and thereon alleges that Defendant has not
7 successfully sampled and reported during the 2015-2016 reporting year by failing to
8 take a minimum of four samples.

9 101. Information available to Plaintiff indicates that Defendant has not
10 submitted any reports pursuant to Receiving Water Limitation C(4)(a) within 60-days of
11 becoming aware of levels in its storm water exceeding the EPA Benchmark values or
12 applicable Water Quality Standards, or filed any reports describing the Aztec Facility's
13 noncompliance with the Industrial Permit pursuant to Section C(11)(d) of the Industrial
14 Permit.

15 **VI. CLAIMS FOR RELIEF**

16 **FIRST CAUSE OF ACTION**

17 **Discharges of Contaminated Storm Water in**
18 **Violation of the Industrial Permit's Discharge Prohibitions and**
19 **Receiving Water Limitations and the Clean Water Act**
(Violations of 33 U.S.C. §§ 1311(a), 1342)

20 102. Plaintiff incorporates the preceding paragraphs as if fully set forth herein.

21 103. Plaintiff is informed, believes, and thereon alleges that as a result of the
22 operations at the Aztec Facility, during every significant rain event, storm water
23 containing pollutants harmful to fish, plant, bird life, and human health is discharged
24 from the Aztec Facility to the Receiving Waters.

25 104. Plaintiff is informed, believes, and thereon alleges that Defendant's
26 discharges of contaminated storm water have caused, continue to cause, and threaten to
27 cause pollution, contamination, and/or nuisance to the waters of the United States in
28 violation of Discharge Prohibition A(2) of the Industrial Permit and Sections III.C. and

1 VI.C of the New Industrial Permit.

2 105. Plaintiff is informed, believes, and thereon alleges that these discharges of
3 contaminated storm water have, and continue to, adversely affect human health and the
4 environment in violation of Receiving Water Limitation C(1) of the Industrial Permit
5 and Section VI.B. of the New Industrial Permit.

6 106. Plaintiff is informed, believes, and thereon alleges that these discharges of
7 contaminated storm water have caused or contributed to and continue to cause or
8 contribute to an exceedance of Water Quality Standards in violation of Receiving Water
9 Limitation C(2) of the Industrial Permit, and Discharge Prohibition III.D. and Receiving
10 Water Limitation VI.A. of the New Industrial Permit.

11 107. Plaintiff is informed, believes, and thereon alleges that from at least June
12 8, 2011 through the present, Defendant has discharged, and continues to discharge,
13 contaminated storm water from the Aztec Facility to Receiving Waters in violation of
14 the prohibitions of the Industrial Permit. Defendant is liable for civil penalties for at
15 least 27 violations of the Industrial Permit and the CWA.

16 108. Plaintiff is informed, believes, and thereon alleges that Defendant's
17 violations of the Industrial Permit and the CWA are ongoing.

18 109. Defendant will continue to be in violation of the Industrial Permit
19 requirements each day the Aztec Facility discharges contaminated storm water in
20 violation of Industrial Permit prohibitions.

21 110. Every day that Defendant has discharged and/or continues to discharge
22 polluted storm water from the Aztec Facility in violation of the Industrial Permit is a
23 separate and distinct violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

24 111. By committing the acts and omissions alleged above, Defendant is subject
25 to an assessment of civil penalties for each and every violation of the CWA occurring
26 from June 8, 2011 to the present pursuant to Sections 309(d) and 505 of the CWA, 33
27 U.S.C. §§ 1319(d) and 1365, and the Adjustment of Civil Monetary Penalties for
28 Inflation, 40 C.F.R. §12.4.

112. An action for injunctive relief under the CWA is authorized by 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above would irreparably harm Plaintiff and the citizens of the State of California, for which harm they have no plain, speedy, or adequate remedy at law.

113. Wherefore, Plaintiff prays judgment against Defendant as set forth hereafter.

SECOND CAUSE OF ACTION

Failure to Develop and/or Implement BMPs that Achieve Compliance with Best Available Technology Economically Achievable and Best Conventional Pollutant Control Technology in Violation of the Industrial Permit and the Clean Water Act (Violations of 33 U.S.C. §§1311, 1342)

114. Plaintiff incorporates the preceding paragraphs as if fully set forth herein.

115. Plaintiff is informed, believes, and thereon alleges that Defendant has failed to develop and/or implement BMPs that achieve compliance with BAT/BCT requirements of the Industrial Permit and the CWA.

116. Sampling of the Aztec Facility's storm water discharges as well as Plaintiff's observations of the Aztec Facility demonstrate that Defendant has not developed and has not implemented BMPs that meet the standards of BAT/BCT. Thus, Defendant is in violation of Effluent Limitations of the Industrial Permit and New Industrial Permit.

117. Plaintiff is informed, believes, and thereon alleges that Defendant has been in daily and continuous violation of the BAT/BCT requirements of the Industrial Permit and the CWA every day since at least February 29, 2011, and of the BAT/BCT requirements of the New Industrial Permit since July 1, 2015.

118. Plaintiff is informed, believes, and thereon alleges that Defendant's violations of the Effluent Limitations and the CWA are ongoing.

119. Defendant will continue to be in violation every day the Aztec Facility operates without adequately developing and/or implementing BMPs that achieve BAT/BCT to prevent or reduce pollutants associated with industrial activity in storm

1 water discharges at the Aztec Facility.

2 120. Every day that Defendant operates the Aztec Facility without adequately
3 developing and/or implementing BMPs that achieve BAT/BCT in violation of the
4 Industrial Permit or New Industrial Permit is a separate and distinct violation of Section
5 301(a) of the CWA, 33 U.S.C. § 1311(a).

6 121. By committing the acts and omissions alleged above, Defendant is subject
7 to an assessment of civil penalties for each and every violation of the CWA occurring
8 from June 8, 2011 to the present pursuant to Sections 309(d) and 505 of the CWA, 33
9 U.S.C. §§ 1319(d) and 1365, and the Adjustment of Civil Monetary Penalties for
10 Inflation, 40 C.F.R. §12.4.

11 122. An action for injunctive relief under the CWA is authorized by 33 U.S.C.
12 § 1365(a). Continuing commission of the acts and omissions alleged above would
13 irreparably harm Plaintiff and the citizens of the State of California, for which harm
14 they have no plain, speedy, or adequate remedy at law.

15 Wherefore, Plaintiff prays judgment against Defendant as set forth hereafter.

16 **THIRD CAUSE OF ACTION**

17 **Failure to Develop and/or Implement an Adequate**
18 **Storm Water Pollution Prevention Plan**
19 **in Violation of the Industrial Permit and Clean Water Act**
(Violations of 33 U.S.C. §§ 1311, 1342)

20 123. Plaintiff incorporates the preceding paragraphs as if fully set forth herein.

21 124. Plaintiff is informed, believes, and thereon alleges that Defendant has
22 failed to develop and/or implement an adequate SWPPP for the Aztec Facility that
23 meets the requirements set out in Section A and Provision E of the Industrial Permit and
24 Section X of the New Industrial Permit.

25 125. Defendant has been in violation of the SWPPP requirements every day
26 since at least June 8, 2011.

27 126. Defendant's violations of the Industrial Permit, New Industrial Permit and
28

1 the CWA are ongoing.

2 127. Defendant will continue to be in violation of the SWPPP requirements
3 every day the Aztec Facility operates with an inadequately developed and/or
4 implemented SWPPP for the Aztec Facility.

5 128. Each day that Defendant operates the Aztec Facility without developing
6 and/or implementing an adequate SWPPP is a separate and distinct violation of Section
7 301(a) of the CWA 33 U.S.C. §1311(a).

8 129. By committing the acts and omissions alleged above, Defendant is subject
9 to an assessment of civil penalties for each and every violation of the CWA occurring
10 from June 8, 2011 to the present pursuant to Sections 309(d) and 505 of the CWA, 33
11 U.S.C. §§ 1319(d) and 1365, and the Adjustment of Civil Monetary Penalties for
12 Inflation, 40 C.F.R. §12.4.

13 130. An action for injunctive relief under the CWA is authorized by 33 U.S.C.
14 § 1365(a). Continuing commission of the acts and omissions alleged above would
15 irreparably harm Plaintiff and the citizens of the State of California, for which harm
16 they have no plain, speedy, or adequate remedy at law.

17 Wherefore, Plaintiff prays judgment against Defendant as set forth hereafter.

18 **FOURTH CAUSE OF ACTION**

19 **Failure to Implement an**
20 **Adequate Monitoring and Reporting Program**
21 **In Violation of the Industrial Permit and the Clean Water Act**
22 **(Violations of 33 U.S.C. §§ 1311, 1342)**

23 131. Plaintiff incorporates the preceding paragraphs as if fully set forth herein.

24 132. Plaintiff is informed, believes, and thereon alleges that Defendant has
25 failed to develop and/or implement an adequate M&RP for the Aztec Facility as
26 required by Section B and Provision E(3) of the Industrial Permit and Section XI of the
27 New Industrial Permit.

28 133. Plaintiff is informed, believes, and thereon alleges that conditions at the
Aztec Facility, as determined via sampling of storm water discharges from the Aztec

1 Facility, and the annual reports submitted by Defendant all demonstrate that the Aztec
2 Facility has not implemented an adequate M&RP that meets the requirements of the
3 Industrial Permit and New Industrial Permit.

4 134. Plaintiff is informed, believes, and thereon alleges that Defendant has
5 failed and continues to fail to collect samples from all discharge points during all storm
6 events in violation of Section B(5) of the Industrial Permit.

7 135. Plaintiff is informed, believes, and thereon alleges that Defendant has
8 failed and continues to fail to identify inadequacies in its SWPPP and BMPs.

9 136. Defendant's violations of the Industrial Permit, New Industrial Permit and
10 the CWA are ongoing.

11 137. Defendant will continue to be in violation of the Industrial Permit, New
12 Industrial Permit and the CWA each day the Aztec Facility operates with an
13 inadequately implemented M&RP.

14 138. Each day Defendant operates the Aztec Facility without implementing an
15 adequate M&RP for the Aztec Facility is a separate and distinct violation of Section
16 301(a) of the CWA, 33 U.S.C. §1311(a).

17 139. By committing the acts and omissions alleged above, Defendant is subject
18 to an assessment of civil penalties for each and every violation of the CWA occurring
19 from June 8, 2011 to the present pursuant to Sections 309(d) and 505 of the CWA, 33
20 U.S.C. §§ 1319(d) and 1365, and the Adjustment of Civil Monetary Penalties for
21 Inflation, 40 C.F.R. §12.4.

22 140. An action for injunctive relief under the CWA is authorized by 33 U.S.C.
23 § 1365(a). Continuing commission of the acts and omissions alleged above would
24 irreparably harm Plaintiff and the citizens of the State of California, for which harm
25 they have no plain, speedy, or adequate remedy at law.

26 Wherefore, Plaintiff prays judgment against Defendant as set forth hereafter.

27 /././

28 /././

FIFTH CAUSE OF ACTION

**Failure to Conduct Required Rain Event Sampling in
Violation of the Industrial Permit**

141. Plaintiff incorporates the preceding paragraphs as if fully set forth herein.

142. Plaintiff is informed, believes, and thereon alleges that Defendant is in violation of New Industrial Permit, §XI.B.2. by failing to sample four rain events during the 2015-2016 reporting year.

143. By committing the acts and omissions alleged above, Defendant is subject to an assessment of civil penalties for each and every violation of the CWA occurring from July 1, 2015 to the present, pursuant to Sections 309(d) and 505 of the CWA, 33 U.S.C. §§1319(d) and 1365, and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. §12.4.

144. An action for injunctive relief under the CWA is authorized by 33 U.S.C. §1365(a). Continuing commission of the omissions alleged above would irreparably harm the Plaintiff and the citizens of the State of California, for which harm they have no plain, speedy, or adequate remedy at law.

Wherefore, Plaintiff prays judgment against Defendant as set forth hereafter.

SIXTH CAUSE OF ACTION

**Failure to Submit Reports in
Violation of the Industrial Permit**

145. Plaintiff incorporates the preceding paragraphs as if fully set forth herein.

146. Plaintiff is informed, believes, and thereon alleges that Defendant is in violation of New Industrial Permit Section XI.B.11.a for failing to sample and report the required four storm events and report within 30 days to SMARTS.

147. Plaintiff is informed, believes, and thereon alleges that Defendant failed to submit a written report identifying what additional BMPs will be implemented to achieve Water Quality Standards even though Defendant discharge exceeded receiving Water Quality Standards, in violation of Receiving Water Limitations VI.A-C. of the New Industrial Permit.

148. Defendant has been in violation each day the Aztec Facility operates

1 without reporting as required by the Industrial Permit.

2 149. Defendant's violations of the Industrial Permit and the CWA are ongoing.

3 150. Every day Defendant operates the Aztec Facility without reporting as
4 required by the Industrial Permit is a separate and distinct violation of the Industrial
5 Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a).

6 151. Defendant has been in daily and continuous violation of the Industrial
7 Permit's reporting requirements every day since at least July 1, 2015.

8 152. By committing the acts and omissions alleged above, Defendant is subject
9 to an assessment of civil penalties for each and every violation of the CWA occurring
10 from July 1, 2015 to the present pursuant to Sections 309(d) and 505 of the CWA, 33
11 U.S.C. §§ 1319(d) and 1365, and the Adjustment of Civil Monetary Penalties for
12 Inflation, 40 C.F.R. §12.4.

13 153. An action for injunctive relief under the CWA is authorized by 33 U.S.C.
14 § 1365(a). Continuing commission of the acts and omissions alleged above would
15 irreparably harm Plaintiff and the citizens of the State of California, for which harm
16 they have no plain, speedy, or adequate remedy at law.

17 Wherefore, Plaintiff prays judgment against Defendant as set forth hereafter.

18 **VII. RELIEF REQUESTED**

19 154. Wherefore, Plaintiff respectfully request that this Court grant the following
20 relief:

21 a. A Court order declaring Defendant to have violated and to be in
22 violation of Section 301(a) of the CWA 33 U.S.C. § 1311(a) for its unlawful discharges
23 of pollutants from the Aztec Facility in violation of the substantive and procedural
24 requirements of the Industrial Permit, and as of July 1, 2015, the New Industrial Permit;

25 b. A Court order enjoining the Defendant from violating the substantive
26 and procedural requirements of the New Industrial Permit;

27 c. A Court order assessing civil monetary penalties of \$37,500 per day
28 per violation for each violation of the CWA at the Aztec Facility occurring from June 8,

1 2011 through November 1, 2015, and \$51,570 per violation occurring after November
2 2, 2015, as permitted by 33 U.S.C. § 1319(d) and Adjustment of Civil Monetary
3 Penalties for Inflation, 40 C.F.R. § 19.4;

4 d. A Court order requiring Defendant to take appropriate actions to
5 restore the quality of waters impaired by its activities;

6 e. A Court order awarding Plaintiff its reasonable costs of suit, including
7 attorney, witness, expert, and consultant fees, as permitted by Section 505(d) of the
8 Clean Water Act, 33 U.S.C. § 1365(d);

9 f. Any other relief as this Court may deem appropriate.

10 Dated: December 6, 2016

11 Respectfully submitted,
12 COAST LAW GROUP LLP

13
14 By: s/Livia B. Beaudin
15 LIVIA B. BEAUDIN
16 Attorneys for Plaintiff
17 COASTAL ENVIRONMENTAL
18 RIGHTS FOUNDATION
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20
21
22
23
24
25
26
27
28

EXHIBIT A

60 Day Notice Letter



1140 S. Coast Highway 101
Encinitas, CA 92024

Tel 760-942-8505
Fax 760-942-8515
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June 8, 2016

Michael Hyndman
Agent for Service of Process
Aztec Technology Corporation
2550 S. Santa Fe Ave
Vista California 92084

VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Michael Hyndman
Aztec Containers
2600 South Santa Fe Ave
Vista California 92084

**Re: Clean Water Act Notice of Intent to Sue/60-Day Notice Letter
Aztec Container Violations of General Industrial Permit**

Dear Mr. Hyndman:

Please accept this letter on behalf of the Coastal Environmental Rights Foundation (CERF) regarding Aztec Technology Corporation's (doing business as Aztec Containers) violations of the State Water Resources Control Board Water Quality Order No. 97-03-DWQ, Natural Pollutant Discharge Elimination System (NPDES), General Permit No. CAS000001, and Waste Discharge Requirements for Discharges of Storm Water Associated With Industrial Activities Excluding Construction Activities (General Industrial Permit).¹ This letter constitutes CERF's notice of intent to sue for violations of the Clean Water Act and General Industrial Permit for the Aztec Containers facility located at 2600 South Santa Fe Ave, Vista, California ("Facility" or "Aztec"), as set forth in more detail below.

Section 505(b) of the Clean Water Act requires that sixty (60) days prior to the initiation of a citizen's civil lawsuit in Federal District Court under Section 505(a) of the Act, a citizen must give notice of the violations and the intent to sue to the violator, the Administrator of the U.S. Environmental Protection Agency, the Regional Administrator of the U.S. Environmental Protection Agency for the region in which the violations have occurred, the U.S. Attorney General, and the Chief Administrative Officer for the State in which the violations have occurred (33 U.S.C. § 1365(b)(1)(A)). This letter provides notice of Aztec's Clean Water Act violations and CERF's intent to sue.

I. Coastal Environmental Rights Foundation (CERF)

CERF is a non-profit public benefit corporation organized under the laws of the State of California with its main office in Encinitas, CA. CERF is dedicated to the preservation,

¹ On April 1, 2014, the State Water Resources Control Board adopted Order No. 2014-0057-DWQ, which amends the Industrial General Permit ("New Industrial Permit"). These amendments became effective on July 1, 2015. All references to the General Industrial Permit are to the Permit as it existed at the time of the violations noted herein.

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protection, and defense of the environment, the wildlife, and the natural resources of the California Coast. Members of CERF use and enjoy the waters into which pollutants from Aztec's ongoing illegal activities are discharged, namely Agua Hedionda Creek, Agua Hedionda Lagoon, and eventually the Pacific Ocean. The public and members of CERF use Agua Hedionda Creek and Agua Hedionda Lagoon to fish, boat, kayak, surf, swim, scuba dive, birdwatch, view wildlife, and to engage in scientific studies. The discharge of pollutants by the Aztec Facility affects and impairs each of these uses. Thus, the interests of CERF's members have been, are being, and will continue to be adversely affected by the Aztec Facility Owners and/or Operators' (collectively referred to as "Aztec Owners") failure to comply with the Clean Water Act and the General Industrial Permit.

II. Storm Water Pollution and the General Industrial Permit

A. Duty to Comply and Failure to Enroll

1. *The Aztec Facility*

The Aztec Facility is approximately 100,000 square feet and operates as a goods transfer company consisting of primarily truck and tractor parking. (SWPPP, p. 2). The Facility also has warehouse buildings used for the production and storage of new furniture, equipment and materials. (*Id.*). The Facility SIC code is 3412.

Significant materials potentially onsite include used metal working fluid and fines; solvent cleaners; rinse waters; cuttings, scraps, turnings and fines; paint wastes and paint thinner; metal scraps, chips, borings, and scale; acid, oil and grease; gas and diesel fuel; dirt and metals. (EPA Fact Sheet Sector AA²; SWPPP, pp. 12-13). At the Facility, container modification includes metal cutting, welding, and grinding, wood work, and caulking. (SWPPP, p. 10). After modification, containers are transferred to the eastern portion of the facility to be painted. (*Id.*). Containers are also hand-grinded to remove rust. (*Id.*).

Raw materials, containers, fork lifts, trucks, and additional equipment are stored outdoors, exposing them to storm water. (SWPPP, pp. 10-12). Vehicle maintenance, fabrication, painting and grinding, as well as scrap metal roll-off occur outdoors. (SWPPP, pp. 13-14). As a result, potential pollutants at the Facility include, but are not limited to: pH-affecting substances; TSS, oil and grease, aluminum, iron, zinc, and nitrates/nitrites. (*Id.*).

2. *The Aztec Facility's Discharge of Pollutants*

Under the Clean Water Act, the discharge of any pollutant to a water of the United States is unlawful except in compliance with certain provisions of the Clean Water Act. (See 33 U.S.C. § 1311 (a)). In California, any person who discharges storm water associated with industrial activity must comply with the terms of the General Industrial Permit in order to lawfully discharge. Pursuant to Section C(1) of the General Industrial Permit, a facility operator must comply with all conditions of the General Industrial Permit. (See New Industrial Permit, §I.A.8.

² Available at
https://www.epa.gov/sites/production/files/2015-10/documents/sector_aa_fabmetal.pdf

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[dischargers must “comply with all requirements, provisions, limitations, and prohibitions in this General Permit.”]). Failure to comply with the General Industrial Permit is a Clean Water Act violation. (General Industrial Permit, § C.1; New Industrial Permit §XXI.A.). Any non-compliance further exposes an owner or operator to enforcement action and/or removal from General Permit coverage. (*Id.*).

As an enrollee Aztec has a duty to comply with the General Industrial Permit and New Industrial Permit and is subject to all of the provisions therein. Though Aztec has operated at the current site since at least March 4, 2010, Aztec only recently enrolled as a discharger subject to the General Industrial Permit on October 12, 2015, WDID Number 9 371026237.³ All discharges from the Facility prior to October 12, 2015 were therefore unlawful.

Moreover, because the Facility has failed to demonstrate (and cannot demonstrate) compliance with New Industrial Permit Discharge Prohibition VII.B. as a New Discharger, it should not have been enrolled under the New Industrial Permit. The Aztec Owners falsely reported the Facility does not discharge directly to Agua Hedionda Creek in order to obtain coverage. The Facility does discharge directly into the 303(d)-listed water body. Only through such false reporting was the Facility able to obtain coverage without the required documentation.

Because the Facility has contributed to and continues to contribute to or cause a water quality exceedance in Agua Hedionda Creek, all discharges at the Facility are unlawful and must be ceased. (New Industrial Permit, §VII.B. and §§ III.C-D).

B. Failure to Monitor

The Aztec Owners have failed to sample as required under the Industrial Permit and New Industrial Permit. Though there have been numerous qualifying storm events, because Aztec failed to enroll under the Industrial Permit until October 12, 2015 – well after it began discharging storm water – Aztec has failed to monitor as required pursuant to the Industrial Permit. Further, the New Industrial Permit requires dischargers to take two samples between July 1 and December 31 and two samples between January 1 and June 30. (New Industrial Permit, §XI.B.2). Likewise, the Facility SWPPP requires Aztec to sample a minimum of four samples per year. (SWPPP, p. 24). Nonetheless, Aztec has failed to comply with these requirements.

Further, though the SWPPP summarily discounts the potential for the Facility to discharge pollutants for which Agua Hedionda Creek is listed, the Industrial Permit requires more. Agua Hedionda Creek is 303(d) listed for numerous constituents that are likely to be associated with industrial storm water, including: enterococcus, fecal coliform, manganese, phosphorous, selenium, total dissolved solids, and total nitrogen. (New Industrial Permit, Appendix 3). In particular, the EPA Sector AA Fact Sheet specifically identifies manganese as a pollutant associated with metal preparation. Further, the Aztec SWPPP acknowledges the presence of nitrogen at the Facility. (SWPPP, pp. 10-14). The Facility must therefore monitor

³ Indeed, Aztec Technology was identified by the Regional Board as a non-filer on December 21, 2011.

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for these additional constituents to verify they are not present in the Facility's discharge. Indeed, prior to enrollment, the Aztec Owners should have conducted such testing. (See New Industrial Permit, §VII.B; see Section A above).

The Aztec Owners had numerous opportunities to sample but failed to do so. (See Exhibit A). When monitoring was conducted, Aztec failed to include analysis for the aforementioned 303(d) constituents. The Aztec Owners are thus subject to penalties in accordance with the New Industrial Permit and General Industrial Permit – punishable by a minimum of \$37,500 per day of violation. (33 U.S.C. §1319(d); 40 CFR 19.4).

C. The Aztec Facility Discharges Contaminated Storm Water in Violation of the General Industrial Permit

Though only recently available, the Aztec monitoring reports indicate consistent exceedances and violations of the General Industrial Permit and New Industrial Permit. Discharge Prohibition A(2) of the General Industrial Permit and New Industrial Permit Sections III.C-D prohibit storm water discharges and authorized non-storm water discharges which cause or threaten to cause pollution, contamination, or nuisance.

Receiving Water Limitation C(1) of the Storm Water Permit prohibits storm water discharges to surface or groundwater that adversely impact human health or the environment. In addition, receiving Water Limitation C(2) prohibits storm water discharges and authorized non-storm water discharges, which cause or contribute to an exceedance of any water quality standards or applicable Basin Plan water quality standards. (See New Industrial Permit Receiving Water Limitations VI.A-C).

The California Toxics Rule ("CTR"), 40 C.F.R. 131.38, is an applicable water quality standard. (*Baykeeper v. Kramer Metals, Inc.* (C.D. Cal. 2009) 619 F.Supp.2d 914, 926). "In sum, the CTR is a water quality standard in the General Permit, Receiving Water Limitation C(2). A permittee violates Receiving Water Limitation C(2) when it 'causes or contributes to an exceedance of' such a standard, including the CTR." (*Id.* at 927).

If a discharger violates Water Quality Standards, the General Industrial Permit and the Clean Water Act require that the discharger implement more stringent controls necessary to meet such Water Quality Standards. (General Industrial Permit, Fact Sheet p. viii; 33 U.S.C. § 1311(b)(1)(C)). The Aztec Owners have failed to comply with this requirement, routinely violating Water Quality Standards without implementing BMPs to achieve BAT/BCT or revising the Facility's SWPPP pursuant to General Industrial Permit section (C)(3) and New Industrial Permit Section X.B.1.

As demonstrated by sample data submitted by Aztec, from October 12, 2015 (and likely beginning in 2011 prior to enrollment) through the present, the Aztec Owners have discharged and continue to discharge storm water containing pollutants at levels in violation of water quality prohibitions and limitations during every significant rain event. The Aztec Facility's sampling data reflects numerous discharge violations (see below). Indeed, Aztec's monitoring data reveals exceedances for zinc as high as **20 times** the applicable standard and iron **110 times** the standard. Notably, Aztec's own sampling data is not subject to impeachment. (*Baykeeper*,

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supra, 619 F.Supp. 2d at 927, citing *Sierra Club v. Union Oil Co. of Cal.*, (9th Cir. 1987) 813 F.2d 1480, 1492 ["when a permittee's reports indicate that the permittee has exceeded permit limitations, the permittee may not impeach its own reports by showing sampling error"]).

This data further demonstrates the Aztec Facility continuously discharges contaminated storm water during rain events which have not been sampled.

No.	Date	Location	Parameter	Units	Result	Benchmark/ WQO
1	12/22/2015	SP-1	Iron	mg/L	16	.3*
2	12/22/2015	SP-1	Zinc	mg/L	1.5	.12
3	12/22/2015	SP-1	Aluminum	mg/L	13	.75
4	12/22/2015	SP-1	TSS	mg/L	470	100
5	12/22/2015	SP-1	Nitrate/Nitrite	mg/L	2.8	.68
6	12/22/2015	SP-2	Iron	mg/L	1.8	.3*
7	12/22/2015	SP-2	Zinc	mg/L	.63	.12
8	1/5/2016	SP-1	Iron	mg/L	33	.3*
9	1/5/2016	SP-1	Zinc	mg/L	2.4	.12
10	1/5/2016	SP-1	Aluminum	mg/L	25	.75
11	1/5/2016	SP-1	TSS	mg/L	1100	100
12	1/5/2016	SP-2	Zinc	mg/L	2.2	.12
13	1/5/2016	SP-2	Aluminum	mg/L	7.6	.75
14	1/5/2016	SP-2	TSS	mg/L	340	100
15	1/5/2016	SP-2	Iron	mg/L	18	.3*
16	3/7/2016	SP-1	Iron	mg/L	4.4	.3*
17	3/7/2016	SP-1	Zinc	mg/L	.29	.12
18	3/7/2016	SP-1	Aluminum	mg/L	3.3	.75
19	3/7/2016	SP-2	Iron	mg/L	2.4	.3*
20	3/7/2016	SP-2	Zinc	mg/L	.4	.12
21	3/7/2016	SP-2	Aluminum	mg/L	2.5	.75
22	5/6/2016	SP-1	Aluminum	mg/L	11	.75
23	5/6/2016	SP-1	Zinc	mg/L	1.2	.12
24	5/6/2016	SP-1	Iron	mg/L	10	.3*
25	5/6/2016	SP-1	TSS	mg/L	700	100
26	5/6/2016	SP-2	Zinc	mg/L	.44	.12
27	5/6/2016	SP-2	Iron	mg/L	.68	.3*
*Basin Plan Water Quality Objective for Agua Hedionda Creek						

In addition, the Aztec SWPPP notes the Facility discharges non-storm water, including condensate from air compressors. (SWPPP, p. 14). Though the New Industrial Permit conditionally allows discharge of such non-storm water, it contains the following caveat: such non-storm water discharges are not in violation of any Regional Water Board Basin Plan or other requirements or municipal agency ordinance or requirements. (New Industrial Permit §§B.1 and 2). Neither the Regional MS4 Permit or the City of San Marcos authorize non-storm

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water discharge of *compressor condensate*.

Further, though both the Regional MS4 Permit and the City of San Marcos JURMP allow the discharge of *air conditioning* condensate, such flows must be directed to landscaped areas or other pervious surfaces or the sanitary sewer where feasible. (Order No. R9-2013-0001, amended by Orders No. R9-2015-0001 and No. R9-2015-0100, Section E.2.a.(4)(a)). Thus, even if the air conditioning condensate allowance could be extended to compressor condensate, the Aztec Facility's non-storm water discharges would still be unlawful because the Aztec SWPPP does not mention implementation of any of these requirements. Therefore, Aztec's discharge of unauthorized non-storm water constitutes a violation of Discharge Prohibition III.B.

Every day the Aztec Owners discharged or continue to discharge polluted storm water (and unauthorized non-storm water) in violation of the Discharge Prohibitions and Receiving Water Limitations of the General Industrial Permit is a separate and distinct violation of the Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a). The Aztec Owners are subject to civil penalties for all violations of the Clean Water Act occurring since June 8, 2011. These violations are ongoing and will continue each day contaminated storm water is discharged in violation of the requirements of the General Industrial Permit and New Industrial Permit. CERF will include additional violations when information becomes available.

D. Failure to Develop and/or Implement BMPs that Achieve Compliance with Best Available Technology Economically Achievable and Best Conventional Pollutant Control Technology

Effluent Limitation (B)(3) of the General Industrial Permit requires dischargers to reduce or prevent pollutants associated with industrial activity in storm water discharges and authorized non-storm water discharges through implementation of the Best Available Technology Economically Achievable (BAT) for toxic pollutants⁴ and Best Conventional Pollutant Control Technology (BCT) for conventional pollutants.⁵ Likewise, the New Industrial Permit "requires control of pollutant discharges using BAT and BCT to reduce and prevent discharges of pollutants, and any more stringent effluent limitations necessary for receiving waters to meet applicable water quality standards." (New Industrial Permit, §I.D.32; see also, §V.A.).

EPA Benchmarks and New Industrial Permit Numeric Action Levels (NALs) constitute pollutant concentrations which generally indicate whether a facility has successfully developed or implemented BMPs that meet the BAT/BCT Discharges with pollutant concentration levels above EPA Benchmarks, NALs and/or the CTR demonstrate that a facility has failed to develop and/or implement BMPs that achieve compliance with BAT for toxic pollutants and BCT for conventional pollutants.

The Aztec Facility and monitoring data demonstrates consistent exceedances of not

⁴ Toxic pollutants are found at 40 CFR § 401.15 and include, but are not limited to: lead, nickel, zinc, silver, selenium, copper, and chromium.

⁵ Conventional pollutants are listed at 40 CFR § 401.16 and include biological oxygen demand, total suspended solids, pH, fecal coliform, and oil and grease.

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only the CTR, but also EPA benchmarks and NALs. (See monitoring data above). Thus, Aztec's storm water discharge sampling data demonstrates the Facility has not developed and/or implemented BMPs that meet the standards of BAT/BCT. (See *Baykeeper, supra*, 619 F.Supp. 2d at 925 ["Repeated and/or significant exceedances of the Benchmark limitations should be relevant" to the determination of meeting BAT/BCT]). Notably, the Facility lacks any advanced BMPs, despite its repeated and egregious water quality standard exceedances. (SWPPP, p. 22).

Thus, the Aztec Owners are seriously in violation of Section V.A. of the New Industrial Permit. Every day the Aztec Owners operate with inadequately developed and/or implemented BMPs in violation of the BAT/BCT requirements is a separate and distinct violation of the Permits and Section 301(a) of the Clean Water Act. (33 U.S.C. § 1311 (a)). Therefore, the Aztec Owners have been in daily and continuous violation of the BAT/BCT requirements of the General Industrial Permit every day since at least June 8, 2011, and are subject to penalties for all such violations. Thus, the Aztec Owners are liable for civil penalties for 1,825 violations of the General Industrial Permit and the Clean Water Act.

These violations are ongoing and the Aztec Owners will continue to be in violation every day they fail to develop and/or implement BMPs that achieve BAT/BCT to prevent or reduce pollutants associated with industrial activity in storm water discharges at the Aztec Facility.

E. Inadequate Storm Water Pollution Prevention Plan

One of the main requirements for the General Industrial Permit is the Storm Water Pollution Prevention Plan (SWPPP). (General Industrial Permit §A; New Industrial Permit §X.). Aztec has not developed an adequate SWPPP as required by the New Industrial Permit. (New Industrial Permit, §X.A.1-10).

The Aztec SWPPP, uploaded to SMARTS on October 12, 2015 fails to adequately evaluate the Facility's potential contribution of pollutants for which the receiving water, Agua Hedionda Creek, is listed. As noted above, Agua Hedionda Creek is listed as impaired for numerous constituents which are likely discharged by Aztec. Indeed, the Facility already contributes to the Creek's impairment for nitrogen, with one sample over four times the nitrogen NAL. Because the Facility discharges directly into Agua Hedionda Creek, such exceedances should trigger immediate SWPPP revision (and more likely immediate cessation of all discharges).

The latest SWPPP also fails to account for the numerous and repeated violations identified by Facility's monitoring data – ensuring these violations continue. The SWPPP is therefore inadequate. (See New Industrial Permit §I.E.37. ["Compliance with water quality standards may, in some cases, require Dischargers to implement controls that are more protective than controls implemented solely to comply with the technology-based requirements in this General Permit."]). If a discharger determines industrial discharges contain pollutants in violation of Receiving Water Limitations (Section VI), the discharger is required to assess the BMPs in the SWPPP and determine whether additional measures and a revised SWPPP are necessary. (New Industrial Permit, §XX.B.1). Aztec has clearly failed to comply with these requirements.

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Every day the Aztec Owners operate the Facility without an adequate SWPPP, is a separate and distinct violation of the General Industrial Permit, New Industrial Permit, and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). The Aztec Owners have been in daily and continuous violation of the General Industrial Permit and New Industrial Permit⁶ since at least June 8, 2011 (and likely beginning well before then). These violations are ongoing and the Aztec Owners will continue to be in violation every day they fail provide an adequate SWPPP for the Facility. Thus, the Aztec Owners are liable for civil penalties of up to \$37,500 per day of violation for 1,825 violations of the General Industrial Permit and Clean Water Act.

III. Remedies

Upon expiration of the 60-day period, CERF will file a citizen suit under Section 505(a) of the Clean Water Act for the above-referenced violations. During the 60-day notice period, however, CERF is willing to discuss effective remedies for the violations noted in this letter. If you wish to pursue such discussions in the absence of litigation, it is suggested that you initiate those discussions immediately. If good faith negotiations are not being made, at the close of the 60-day notice period, CERF will move forward expeditiously with litigation.

Aztec must demonstrate compliance with New Discharger requirements to discharge into Agua Hedionda Creek, develop and implement an updated SWPPP, install BMPs to address the numerous water quality violations, and implement a robust monitoring plan. Should the Aztec Owners fail to do so, CERF will file an action against Aztec for its prior, current, and anticipated violations of the Clean Water Act. CERF's action will seek all remedies available under the Clean Water Act § 1365(a)(d), including recovery of expert fees, costs, and attorneys' fees. CERF will seek the maximum penalty available under the law which is \$37,500 per day.

CERF may further seek a court order to prevent Aztec from discharging pollutants. A strong or substantial likelihood of success on the merits of CERF's claim exists, and irreparable injuries to the public, public trust resources, and the environments will result if the Facility further discharges pollutants into Agua Hedionda Creek and Agua Hedionda Lagoon.

IV. Conclusion

CERF has retained legal counsel to represent it in this matter. Please direct all communications to Coast Law Group:

Marco A. Gonzalez:
COAST LAW GROUP LLP
1140 S. Coast Highway 101
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CERF will entertain settlement discussions during the 60-day notice period. Should you


⁶ Violations of the New Industrial Permit commenced July 1, 2015.

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wish to pursue settlement, please contact Coast Law Group LLP at your earliest convenience.

Sincerely,

COAST LAW GROUP LLP


Marco A. Gonzalez



Livia Borak
Attorneys for
Coastal Environmental Rights Foundation

cc:

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